

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6517 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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IMAMSHAH KALUSHAH DIWAN

Versus

COMMISSIONER OF POLICE

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Appearance:

MR UI VYAS for Petitioner

MR LR PUJARI ASSTT. GP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/03/99

ORAL JUDGEMENT

Through this petition under Article 226 of the Constitution of India, the petitioner-detenu has challenged the order of detention dated 24th July, 1998 passed by the Commissioner of Police, Vadodara City under section 3 (2) of the Gujarat Prevention of Anti Social Activities Act, 1985 and has prayed for quashing of the said order and for immediate release from illegal detention.

2. From the grounds of detention, it appears that the petitioner is a voluntarily retired police constable who sought voluntary retirement on 31st August, 1997 and was engaged in bootlegging activities. The detaining authority, on the basis of one registered offence under the Bombay Prohibition Act, and on the basis of the statements of three secret witnesses, found that the petitioner is a bootlegger and his activities were prejudicial for the maintenance of public order. Accordingly, the impugned order of detention was passed.

3. The impugned order of detention has been challenged on two grounds. The second ground was subsequently added by getting the petition amended.

4. The first ground has been that the activities of the petitioner were not prejudicial to the maintenance of public order and the second ground has been that the representation dated 7th August, 1998 sent to the Home Minister and received on 11th August, 1998 has not been decided so far. Hence, the impugned order of detention and continued detention of the petitioner is rendered illegal.

5. So far as the second ground is concerned, it has no substance. The counter affidavit of Mr. J.R.Rajput, Under Secretary to the Government, Home Department, Sachivalaya, Gandhinagar shows that the representation dated 7th August, 1998 was received in the office of the Chief Minister on 11th August, 1998. There is no dispute regarding the date of receipt of the representation on 11th August, 1998 by the learned counsel appearing for the petitioner. He, however, contends that the representation was not addressed to the Chief Minister but to the Home Minister. Mr. Pujari, learned Assistant Government Pleader, in reply to this contention, pointed out that the Chief Minister was also holding the charge of Home Minister on the relevant date and, hence, the representation was placed before the Chief Minister on 11th August, 1998. It was sent to the Home Department on the same date. The deputy secretary who was to deal with such representation cleared it on 12th August, 1998. It was then sent to the Principal Secretary (Home) on 13th August, 1998 and it was finally rejected on 14th August, 1998. The delay between 7th August, 1998 to 11th August, 1998 is not to be explained because the delay has to be explained from the date of receipt of representation. Since there is no dispute regarding the date of receipt of representation, the delay between 11th August, 1998 to 14th August, 1998 cannot be said to be inordinate which

requires to be explained. The date of receipt and the date of passing order thereon has to be excluded. Thus, only two days' time was consumed in disposing of the representation which can be said to be an expeditious disposal of the representation.

6. The next ground has been that the activities of the petitioner cannot be said to be prejudicial to the maintenance of public order. It was argued that it is a case of solitary registered offence and even the statements of three secret witnesses do not indicate that the activities of the petitioner were prejudicial to the maintenance of public order. The learned Assistant Government Pleader, on the other hand, contended that huge quantity of foreign liquor was recovered from the petitioner in as much as 519 bottles of foreign liquor worth Rs. 77,850/- and one auto rickshaw were recovered from the petitioner. For this offence, case was registered against the petitioner under the Bombay Prohibition Act. According to the learned Assistant Government Pleader, recovery of huge quantity of foreign liquor and that too from a retired police constable is alarming. The activities of the petitioner were, however, rightly found to be bootlegging activities by the detaining authority for which, he could have pressed in service registered offence and statements of three confidential witnesses and that seems to have been done by him while reaching his subjective satisfaction.

7. However, a bootlegger can be preventively detained only when his activities are found to be prejudicial to the maintenance of public order within the ambit of explanation to sub-section (4) of section 3 of the Prevention of Anti Social Activities Act, 1985 as has been laid down in the case of Piyush Kantilal Mehta versus Commissioner of Police, Ahmedabad [1989 (1) GLR 563 (SC)]. Other reported and unreported judgments were also cited on the point by the learned counsel for the petitioner. However, since the law on the point is well settled, it is not necessary to burden the judgment by so many authorities on the settled point.

8. The conduct of the petitioner that he is a retired police constable per se cannot be said to be an act or activity prejudicial for the maintenance of public order. Likewise, recovery of 519 bottles of foreign liquor could not be pressed in service for declaring the activity of the petitioner prejudicial for maintenance of public order. It is not disclosed in the grounds of detention that at the time of search and seizure of

foreign liquor and auto rickshaw, the petitioner created any situation which could be termed as prejudicial for maintenance of public order. Thus, this registered offence could not be pressed in service for holding that the activities of the petitioner were prejudicial for maintenance of public order.

9. At the most, from the statements of three confidential witnesses, it can be said that the incident of beating between the petitioner and three witnesses did take place in which the witness might have received simple injury inasmuch as they were beaten by kicks and fists and Rampuri knife was shown. In all the three incidents, on the alarm of three witnesses, people from nearby area collected and tried to intervene. The petitioner went towards them showing Gupti and Rampuri Knife in the company of his associates thereafter. Thus, from these three incidents, it can be inferred that initially the witnesses were beaten by the petitioner and his companions but the witnesses did not receive any serious or grievous injury and the members of public did not receive any injury at all nor they were allegedly beaten either by the petitioner or by his companions. If the petitioner and his companions ran towards the crowd, it might be with a view to disburse the crowd and if during this process, some commotation took place, naturally, the traffic was likely to be disturbed and an atmosphere of fear and terror might have been created but the nature of the incident was not such on which it can be said that the peace and tranquility in the locality was disturbed or affected and the members of public or a section thereof felt sense of insecurity or danger. Consequently, these three statements also could not safely be pressed in service for holding that the activities of the petitioners were prejudicial for maintenance of public order.

10. In the result, it can be said that there was no sufficient material from which the detaining authority could have reached the subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. If this element was lacking, the impugned order of detention would be rendered invalid. It has, therefore, to be quashed.

11. The writ petition, therefore, succeeds and is allowed. The impugned order of detention dated 24th July, 1998 (Annexure "A" to the petition) is hereby quashed. The petitioner-detenu is ordered to be released forthwith unless he is wanted in some other cases.

10.3.1999. (D.C.Srivastava,J.)

Vyas